

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 432 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KASAMBHAI AMUBHAI SONI

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner
MR PS CHAMPANERI for Respondent No. 1
MR SC PATEL, STANDING COUNSEL for respondent no.4

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 04/04/96

ORAL JUDGEMENT

By this petition under Art.226 of the Constitution of India, the petitioner detenu has challenged the order of his detention dated 6th January,1996 passed by the District Magistrate, Baroda in exercise of the powers under sub sec.(2) of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,1980 ("the PBMC

Act" for short) on his being satisfied that the petitioner is required to be detained for preventing him from acting in any manner prejudicial to the maintenance of the supply of essential commodities for the community. Under sec.8 of the PBMC Act, grounds of detention and necessary documents are supplied to the petitioner detenu.

2. This impugned order of detention is challenged by the petitioner on several grounds, one of which is as under:

Mr. Patel, learned counsel for the petitioner contended that the impugned order of detention suffers from the vice of non application of mind inasmuch as the detaining authority has relied on as many as three statements out of which for two, there is specific ground made out in the petition wherein the statements are recorded in the name of one while the same is signed by the other person. Mr. Patel contended that in view of this fact, it can be said that the authority has acted quite mechanically and without application of mind.

3. To substantiate his arguments, he drew attention of this court to statements at page 261, 267 and 351. There is a specific ground made out at ground no. AE and AF. So far as page 261 is concerned, it is a statement of Raju Lalbhai. However, same bears left thumb impression of Raju Devla. So far as page 267 is concerned, it is a statement in the name of Fulaji Saburabhai Rathva while the same is signed by Rathva Gopal Fulaji. At page 351, there is a statement in the name of Rajla Hatu Rathva which is signed by Bhaila Hatu. Thus, the statements in the name of one person have been signed by the other person. Mr. Patel contended that whether the authority while recording the subjective satisfaction has relied on the statements of the persons whose name has appeared in the title or has relied on the statement as if the same is one by the signatory. Thus, from the facts of the case itself, it is clear that the statements are in the name of one but signed by the other persons. According to Mr. Patel, therefore, there is total non application of mind on the part of the detaining authority while recording subjective satisfaction and passing the impugned order of detention against the petitioner detenu.

4. Mr. P.S. Chapaneri, learned AGP, to salvage the situation, has tried to show to the Court that in view of para 6 of the grounds, it can be said that the authority was alive to the statements in the state as it stands as

contended by the learned advocate for the petitioner. To substantiate his contention, Mr. Chapaneri referred to the statements made in the grounds at para 6(6) to the effect that the authority has received number of complaints and in response thereto, he has recorded the statements of many card holders. Mr. Chapaneri thereby wants to contend that though state of affairs is there as it stands, yet, it does not affect adversely on the subjective satisfaction or it cannot be said that the authority has mechanically and without any application of mind, exercised the powers.

5. I am not able to fully convinced by this reply of the learned AGP Mr. Chapaneri. From the statement at page 267 and 351 referred to hereinabove, it is clear that the statements are recorded in the name of the persons other than the signatories of those statements. Thus, the authority has not only mechanically processed the matter but the satisfaction recorded and arrived at on the basis of such statements can be said to be without application of mind. Once it is held that the satisfaction arrived at by the authority is without application of mind, the order of detention based thereon is vitiated and it is liable to be quashed and set aside.

6. In the instant case, the impugned order of detention suffers from the vice of total non application of mind and appears to have been passed in mechanical exercise of the powers and, therefore, it is liable to be quashed and set aside.

7. As this petition is allowed and disposed of on this ground alone, other grounds raised by the petitioner in his petition are not considered in this judgment.

8. In the result, this petition is allowed. The impugned order of detention dated 6th January, 1996 passed by the District Magistrate, Vadodara against the petitioner detenu is hereby quashed and set aside. Respondent No. 3 is directed to set the petitioner Kasambhai Amubhai Soni at liberty forthwith, if not required in connection with any other case. Rule is made absolute accordingly. No order as to costs.

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